



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN 11, TEXAS

JOHN BEN SHEPPERD
ATTORNEY GENERAL

April 13, 1955

Hon. Tom King, Chairman
House Oil, Gas and Mining Committee
Fifty-fourth Legislature
Austin, Texas

Letter Opinion No. MS- 197

Re: Constitutionality of House Bill
217, 54th Legislature

Dear Mr. King:

We quote from your letter of March 30, 1955:

"We would appreciate you giving us an opinion as to whether or not this Bill (H.B. 217, 54th Legislature), if passed into law, would impair existing contracts, and whether or not the bill as written would be unconstitutional."

At the outset we point out that we are familiar neither with the character nor the terms of the contracts to which you refer in your question. Furthermore, we are not in a position to estimate the amounts of gas that will be made available for irrigation purposes under the terms of this bill. Therefore, we cannot know whether this bill, if passed, will in fact render producers unable to fulfill any contract commitments they might have, or will have any impact whatsoever on such contracts.

The Contract Clause of the Federal Constitution (Art I, Sec. 10) provides that no state shall pass any law impairing the obligations of contracts. The obligations of contracts are also protected by Article I, Section 16 of the Constitution of Texas.

In Vieux v. Sixth Ward Building and Loan Association of Newark, N.J., 310 U.S. 32, 39 (1939), the United States Supreme Court said:

"In Home Building and Loan Association vs. Blaisdell, this Court considered the authority retained by the State over contracts 'to safeguard the vital interests of its people'. The rule that all contracts are made subject to this paramount authority was there reiterated. Such authority is not limited to health, morals and safety. It extends to economic needs as well."

Hon. Tom King, Chairman, page 2 (MS- 197)

In Henderson County vs. Thompson, 300 U. S. 258 (1936), the Supreme Court considered appellant's contention that a Texas statute forbidding the use of sweet gas in the manufacture of carbon black impaired the obligations of contracts since it prohibited the performance of appellant's contracts with producers to take sweet gas for its stripping plant and its contract to deliver the residue gas after stripping. The Court rejected this contention with the following reasoning:

" . . . The statute here challenged is not directed against any term of any contract. It deals merely with the use of an article of commerce; and its effect upon contracts is incidental. The distinction was pointed out by the district court, which said that the Constitution of the State of Texas 'has never been held to avoid a police statute dealing directly with physical things in the interest of the public welfare, and touching contractual relationships only incidentally as they may have attached to those physical things prior to the passage of the statute.' 14 F. Supp. 328, 334. That ruling accords with constitutional doctrine long established in this and other courts."

It is well settled that " . . . though the obligations of contracts must yield to a proper exercise of the police power, and vested rights cannot inhibit the proper exertion of the power, it must be exercised for an end which is in fact public and the means adopted must be reasonably adapted to the accomplishment of that end and must not be arbitrary or oppressive." Treigle v. Acme Homestead Association, 297 U.S. 189, 197 (1936).

With this principle in mind, we have examined House Bill 217 to determine if the end sought to be achieved thereby is, in fact, public.

We believe that the Legislature intends by this bill to conserve the soil of this state and to increase and render more stable its agricultural productivity. We conclude that this intention, if effectuated by this bill, will tend to promote the general welfare of our State and will tend to serve an economic need.

The next test to be satisfied under Treigle v. Acme Homestead Association, supra, is whether the means adopted are reasonably adapted to the accomplishment of this end, and are neither arbitrary nor oppressive.

In Dodgen v. Depulgio, 146 Tex. 538, 209 S. W. 2d 588 (1948), our Supreme Court, in discussing Tuttle v. Wood, 35 S. W. 2d 1061 (Tex. Civ. App. 1930, writ refused), stated:

"It is held. . . that in passing on the Constitutionality of statutes enacted under the police power, . . . it must be kept in view that 'so long as that power is reasonably exercised by the legislative authority, no other branch of the government may interfere therewith,' and that ordinarily 'the necessity or reasonableness of regulation or prohibition * * * is left to the discretion of the Legislature, whose determination thereof, in the exercise of a sound discretion, is conclusive upon the courts.'"

We conclude that the use of natural gas, on the premises where such gas is produced, for the purpose of operating irrigation pumps is reasonably related to the accomplishment of the end sought by the Legislature in House Bill 217, and is neither arbitrary nor oppressive in view of the paramount necessity, as determined by the Legislature, for legislation designed to conserve and render more productive the soil of Texas. Ordinarily, the necessity or reasonableness of regulation or prohibition is left to the discretion of the Legislature. Dodgen v. Depulgio, supra.

We assume that the Legislature is aware of the impact this Act may have on the settled doctrines and practices of this State. In making the use of natural gas for irrigation pumps paramount to all other uses, and by repealing all statutes that may conflict with this use, the Legislature will perhaps be repealing the authority now vested in the Railroad Commission to regulate oil and gas production, insure ratable taking of oil and gas (House Bill 217 is not restricted in its operation to gas wells, nor to the amount of gas that can be demanded), and the authority to require the return of natural gas to the producing formation in order to increase the ultimate recovery of oil from such formation. House Bill 217 could have the further effect of curtailing or denying the use of natural gas for lawful and necessary purposes other than the operation of irrigation pumps. To subordinate these important functions and uses to the use of natural gas for irrigation pumps is within the discretion and determination of the Legislature, however, and we assume, as stated above, that these matters have been taken into consideration in the drafting of this Act.

We hold that House Bill 217 does not operate to impair the obligations of contracts in violation of Section 10, Article I of the Constitution of the United States, and Section 16, Article I of the Constitution of Texas, and is not otherwise unconstitutional.

APPROVED:

Yours very truly,

Enos T. Jones
Reviewer

JOHN BEN SHEPPERD
Attorney General of Texas

W. V. Geppert
Reviewer

By 
Mert Starnes
Assistant Attorney General

Robert S. Trotti
First Assistant